IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

R.S.A.No.729 of 1999
Date of decision : 8.12.2006

Gulzar Singh

.....Appellant

Vs.

Ranjit Singh

....Respondent

CORAM : HON'BLE MR.JUSTICE MAHESH GROVER

Present : None for the appellant.

Mr. M.S.Bedi, Advocate
for the respondent.

...

MAHESH GROVER, J.

The present appeal by the defendant is directed against the judgment and decree of the Civil Judge (Junior Division), Gurdaspur dated 27.3.1996 and the judgment and decree of the Addl.District Judge, Gurdaspur dated 22.1.1999.

Ranjit Singh, the plaintiff-respondent filed a suit for possession of land measuring 13 marlas, broadly on the averments that he was one of the co-sharers of the land comprised in Rect. No.20 Khasra No.9/2 situated in village Sekha and that the appellant was in illegal possession of the same and had raised construction thereon without his consent.

The appellant contested the suit and controverted the assertions made by the respondent. The fact of the respondent being a co-sharer of the suit land was denied and it was pleaded that there was a Smadh of Peer Baba Bale Shah adjoining the suit land and that

the appellant was the Mohtamim of the Smadh. It was further pleaded that Bal Kaur, grand mother of the respondent had permitted the appellant to use the suit land and it was on the strength of that permission that he had been occupying the land over since.

On the pleadings of the parties, the following issues were framed :

1. Whether the defendant is in possession of suit property as licencee and sad licence has become irrevocable? OPD
2. Whether the plaintiff is entitled to possession of the suit land? OPP
3. Relief.

After appraisal of the evidence before it, the learned trial court went on to decree the suit of the respondent by holding issue No.2 in favour of the respondent. An appeal ensued and the learned lower appellate court affirmed the findings of the trial court vide its judgment dated 22.1.1999 which has resulted in the present Regular Second Appeal having been filed by the appellant.

No one has put in appearance on behalf of the appellant and even on few dates prior thereto no one had appeared.

Mr. M.S.Bedi, learned counsel for the respondent has contended that both the courts had concurrently held that the appellant was in unauthorised occupation of the suit land. He further went on to contend that even though no plea of licence had been taken in the written statement, yet the courts had examined the plea and had come to the conclusion that there was no licence and in any

eventuality the licence had expired which would automatically bring to an end the licence in favour of the appellant if any.

I have heard the learned counsel for the respondent and have perused the record with his assistance.

Undeniably, no such plea of licence was raised by the appellant in his written statement. The courts below could not have examined any other aspect of the matter in the absence of specific pleadings. Be that as it may, even if the same had been examined, it had been negatived on the strength of the evidence adduced before the courts below. Both the courts have concurrently recorded the fact that the appellant is in unauthorised occupation of the land. These are pure findings of fact which cannot be adjudicated upon under the provisions of Section 100 of the Code of Civil Procedure, especially in the absence of any substantial question of law having been shown to have arisen in the appeal.

The learned counsel for the respondent very fairly pointed out to the proceedings initiated by the appellant under Order 41 Rue 27 of the Civil Procedure Code in which Exs.PX and PY, which were jamabandies, were permitted to be brought on record. Both these jamabandies are of no help to the appellant as similar jamabandies were already on record which had been examined by both the courts below to conclude that the appellant is in unauthorised occupation of the suit land without any title or interest.

For the reasons stated above, the appeal is devoid of any merit and is dismissed as such.

8.12.2006 (MAHESH GROVER)
JUDGE

dss